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Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-5438

LEON GAYLE,
a/k/a LEON WAITERS,

Petitioner,

-vs-

THE PEOPLE OF THE STATE
OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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COUNTER STATEMENT OF FACTS

On September 30, 1977, between 2:00 P. M. and 2:30 P. M., two black males entered the Crone's Drugstore located at 286 Conklin Avenue in Binghamton, New York. One of the black males was tall, approximately 6' 3", and was dressed in a maroon turtleneck. The other was shorter, approximately 5' 7", and was wearing a dark jacket.

Both men came up to the counter where the clerk, Natalia DeJohn was located. The taller of the two asked for two packs of cigarettes. The shorter man asked where the adhesive tape was kept. He went to the aisle and got a roll of tape. At that point, the shorter man asked the other man if this tape would do. The taller man responded that "this will be fine." The shorter man then bent down and came up with a sawed-off shotgun.

Both men came behind the counter and taped the hands of the clerk, the pharmacist, and Sally Cole, who was also behind the counter at the time. Shortly thereafter a customer, Jeffrey O'Hearn, entered the drugstore. He, too, was taken behind the counter and bound. The two men proceeded to take the money and some of the drugs from the store. When the two men left, the three people inside the drugstore waited several minutes then called the police.

Patrolman Martin was one of the first policemen to arrive at the scene of the robbery. Upon arriving, he was advised through a radio dispatcher to begin searching for two black males, possibly in a green Ford with temporary Pennsylvania license plates.

During his search he was informed that Mrs. Betty Reno might have seen the car used in the robbery. Mrs. Reno was then interviewed at her home. She described a car which had come out of the Crone's Drugstore parking lot at the time of the robbery and forced her to stop abruptly as a blue/green car. She thought it was either a Pontiac or a Chrylser. There were two black males in the car.

After interviewing Mrs. Reno, Officer Martin began to check various motels, hotels, and restaurants. While doing so, he found a blue/green Chrysler with temporary Pennsylvania license plates in the parking lot behind The Court Street Inn. Officer Martin went to the office and spoke to Mr. Carl, the motel manager. Mr. Carl told Officer Martin that a black man had registered earlier that day for a single room, room 101. Mr. Carl told Officer Martin that one of the men was very tall and the other was short. Officer Martin then inquired about the blue/green Chrylser that was parked outside of Room 101.

The vehicle did not appear on the motel register. Officer Martin then called this information in to the detective division.

In response to the call, Captain Francescone and a detective unit were dispatched. The Captain arrived at the motel at approximately 5:00 P. M. Once he arrived, he spoke with both Officer Martin and the manager. Captain Francescone then went to room 101 and knocked on the door. A voice from within asked "who is it?" Captain Francescone responded that it was the police. The Captain then heard two men talking inside the room.

Shortly, a black man stepped outside of the room. The Captain asked him who else was in the room and he said "no one." The man fit the description of the shorter man involved in the robbery and was taken into custody.

The manager told the Captain that the man was the one who had registered the room. The Captain obtained the pass-key, went to room 101, and knocked. When the person inside did not respond, the Captain opened the door. When the door was opened both the Captain and Patrolman Martin observed a red turtleneck sweater and a black shirt. Both of these articles of clothing had been mentioned as being worn by the men who robbed the drugstore.

The defendant was found hiding under the bed. The defendant fit the description of the taller man involved in the robbery and was also placed under arrest.

The defendant was taken to police headquarters by Sergeant Corea. The defendant was advised as to his Miranda rights and then was questioned by Sergeant Corea. The defendant made an oral statement as to his involvement in the robbery and this was subsequently reduced to a written statement.

Following the arrest of the two men at the motel. room 101 was secured by the police. Subsequently, a search warrant was obtained for both the room and the Chrylser. When the warrant was executed a loaded sawed-oft shotgun was found in the car. Inside the room the police found a quantity of cash and an amount of drugs. Also recovered was several bills which had "keepsake" identirication belonging to the victims of the robbery.

REASONS FOR DENYING THE WRIT

There are basically two separate reasons why the Writ of Certiore should not be granted:

A. The question: When there is probable cause to believe that a person has committed a violent felony, such as armed robbery, does the Fourth Amendment prohibit a police officer from arresting that person in a dwelling without a warrant and without exigent circumstances, is currently before the Supreme Court of the United States in the case of Theodore Payton v. New York, Index No. 78-5420, and Obie Riddick v. New York, Index No. 78-5421. This case has been heard by the Supreme Court of the United States and a decision holding that such an arrest may be made would make this writ moot.

B. It is respectfully submitted that there were exigent circumstances in the instant case which made it imperative that the police enter the motel room to effect the arrest ot the derendant.

In the present case, the police had probable cause to arrest the defendant prior to their entering the motel room. Due to the rapidly unfolding facts that confronted the police officers, it was reasonable for them to believe that any delay in arresting the defendant could result in injury to both themselves and to others and to the destruction of evidence which was located inside the motel room.

The police were investigating an armed robbery in which a sawed-off shotgun had been displayed. The vehicle which was believed to have been used in the robbery was located at a nearby motel. It was learned that motel employees had observed two men matching the description of the robbers were observed entering the motel room near the parked car shortly after the robbery. The police had knocked on the door, identified themselves, and heard two men inside.

It was at this point that the first man emerged from the motel room. This man matched the description of one of the robbers but did not have the sawed-off shotgun with him. Due to the gravity of the crime and the probability that the person who remained inside had the shotgun with him, the police were justified in entering the motel room and arresting the defendant who would not come to the door in order to protect both themselves and any other person who may pass by.

Secondly, time was of the essence to effect the arrest of the defendant in order to prevent the destruction of any evidence inside the motel room. This was not a situation where the police could have obtained a warrant prior to going to the motel. It was not until the police observed the one man who came out, that they determined that he did match one of the robbers description, which provided a portion

of the probable cause. Similarly this was not a situation in which the police could have posted a guard outside the motel room until a search warrant or arrest warrant could be obtained.

It should be noted that in this case the police had already identified themselves to and had been observed by the people inside the motel room. Had the police waited outside the motel room the defendant, who remained inside and would not come to the door, would have had an opportunity to destroy any of the evidence which was in the motel room with him.

For both of these reasons it is submitted that the exigencies of the moment would not tolerate the delay incident to obtaining a warrant and the warrantless entry into the motel room to effect the arrest was reasonable. Worden v. Hayden, 387 U.S. 294,875 S. Ct. 1642 18 L Ed. 782, Ker v. California, 374 U.S. 23. 83 S Ct. 1623, 10 L Ed. 2d 726, Johnson v. U. S.. 333 U.S. 10. 68 S. Ct. 367, 92 L. Ed. 436.

CONCLUSION

For all of the reasons stated above, it is respectfully submitted that the writ should be denied.

DATED: January 4. 1980
Binghamton, NY

Respectfully submitted,

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